IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.19898 of 1998

Between:

O. Rama Mohan Reddy S/o. O. Narayana Reddy
B.Ed. Assistant (Social) Aided Post, St. Joseph Boys' High School,
Mariyapuram, Cuddapah .

..... PETITIONER

AND

1 Regional Joint Director of School Education,
Cuddapah
2 The District Educational Officer,
Cuddapah.
3 The Director of School Education,
Andhra Pradesh, Hyderabad.
4 The Secretary, Education Committee,
R.C.M. Schools, Mariyapuram, Cuddapah.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or order or direction, particularly one in the nature of Writ of Mandamus, declaring the action of the 1st respondent in not granting permission for absorption of the petitioner into aided post of B.Ed. Assistant (Social Studies) with effect from 30-4-1995, as illegal, improper, arbitrary and unwarranted, and consequently directing the 1st respondent to absorb the petitioner as B.Ed. Assistant (Social Studies) in the aided post in the 4th Respondent R.C.M. Schools with effect from 30-4-1995 with all consequential benefits, including monetary benefits, seniority, etc.

Counsel for the Petitioner: Mr. K.G.KRISHNA MURTHY

Counsel for Respondents 1 to 3: GP FOR SCHOOL EDUCATION

Counsel for Respondent 4 : None appeared

The Court made the following :

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus declaring the action of the 1st respondent in not granting permission for absorption of the petitioner into aided post of B.Ed. Assistant (Social Studies) with effect from 30-4-1995 as arbitrary and illegal and consequently to direct the 1st respondent to absorb the petitioner as B.Ed. Assistant (Social Studies) in the aided post in the 4th respondent-School with effect from 30-4-1995 with all consequential benefits.

According to the petitioner, he has been working in the 4th respondent-School right from 1992 in unaided post and his appointment was approved by the 2nd respondent through Proceedings Rc.No.3494/A2/94, dated 7-6-1997 with effect from 30-4-1995. All through he has been working in unaided post of B.Ed. Assistant (Social Studies) and has been discharging duties to the satisfaction of the school authorities. While so, two posts of B.Ed. Assistants (Social Studies) fell vacant, one due to retirement of S. Papi Reddy and another due to promotion of G.Mariyanna. Though there were two seniors to him, one such senior, by name, K. Bhaskara Rao resigned the said post and the other D. John was adjusted against the vacancy that arose on 31-5-1997. Thus, the 4th respondent-Management submitted proposals on 15-10-1997 to the 1st respondent through the 2nd respondent and sought permission for absorbing him in the aided post of B.Ed. Assistant (Social Studies). Similarly placed Teachers, who were selected along with him, were absorbed into aided posts, but the 1st respondent has not passed any orders insofar as his case was concerned. He has been discharging the duties of B.Ed. Assistant in the aided post, but he was not being paid the salary attached to the said post. He made several representations to the 1st respondent, but there was no response. This action of the 1st respondent is

arbitrary and illegal. Respondent No.1 – competent authority – is dodging the matter. The post against which the proposals were sent for his absorption fell vacant on 1-10-1997. As per G.O.Ms.No.1, dated 1-1-1994, the competent authority has to pass orders within three months from the date of receipt of the proposals or else the incumbent should be deemed to have been absorbed.

A detailed counter affidavit is filed on behalf of respondents 1 to 3 denying the allegations made by the petitioner. It is asserted that the averment that the petitioner was selected for the post of B.Ed. Assistant (unaided) by the selection committee, is not correct. The petitioner appeared before the selection committee on the basis of an interim order granted by this Court in W.P.No.5326 of 1995. The appointment of the petitioner in the post of B.Ed. Assistant (unaided) was approved after disposal of the Writ Petition by the competent authority i.e. 2nd respondent herein through his Proceedings dated 7-6-1997 with effect from 30-4-1995. It is stated that two aided posts of B.Ed. Assistants (Social Studies) fell vacant in the 4th respondent-institution. In the seniority list of B.Ed. Assistants (unaided), the petitioner stands at Sl.No.3. The allegation of the petitioner that one K.Bhaskara Rao, B.Ed. Assistant (Social Studies) resigned from the aided post is not correct and the said Bhaskara Rao resigned from the unaided post only. It is further stated that the 4th respondent submitted proposals on 15-10-1997 to the 1st respondent through the 2nd respondent for permission to fill up the two vacant posts of B.Ed. Assistants (aided) by absorbing from the two seniormost B.Ed. Assistants working in the unaided posts. The said proposal was received by the 1st respondent on 12-10-1998. The Management passed a resolution to the effect that the teachers working in unaided posts of B.Ed. Assistants can be absorbed into aided posts of B.Ed. Assistants. Whereas, the post of B.Ed. Assistant (aided) shall have to be filled up by promotion in order of preference from the categories mentioned in the instructions issued from time to time. Since the proposal from the 5th respondent was for absorption of unaided B.Ed. Assistant to the aided posts of B.Ed. Assistants, a clarification was sought for from the Director of School Education – 3rd respondent - in letter dated 7-11-1997 and the reply to the said letter is awaited. The contention of the petitioner that he is discharging the duties of B.Ed. Assistant (aided post) is incorrect. The petitioner was appointed in the unaided post and the proposal for absorption into aided post has not been approved by the competent authority. The contention of the

petitioner that he made several representations to the 1st respondent is incorrect. It is also stated that there is no such deeming provision in G.O.Ms.No.1, dated 1-1-1994 for absorption of the candidates from unaided posts to aided posts. The Rules only contemplate for approval of the appointments. If the appointment is against unaided post, the Management submitted the proposal and it was not approved by the competent authority, then only the deemed provision could be invoked, but not otherwise. The said deemed provision is not applicable to the approval of the appointment in aided posts. However, in pursuance of the interim order passed by this Court in W.P.M.P.No.23751 of 1998 in the present Writ Petition, the case of the petitioner was considered for absorption against aided vacancy with effect from 25-11-1998; however, the same was made subject to the result of the Writ Petition. It is further stated that the Writ Petition is devoid of merits and is liable to be dismissed.

I have given my earnest consideration to the submissions made by the learned counsel for the parties and gone through the entire material placed on record.

At the outset, it may be noticed that the appointment of the petitioner initially against unaided vacancy was approved with effect from 30-4-1995, though he claimed that he has been working against unaided vacancy since 1992. No doubt, two posts of B.Ed. Assistants (Social Studies) have arisen in the year 1997 in the respondent-School; but that does not mean, the petitioner is automatically entitled for absorption into one of those vacancies from the date the post fallen vacant. There is a procedure to be adopted. A selection committee has to sit and recommend the candidates for appointment and seek approval from the higher authorities. However, this is a case where the case of the petitioner was considered by the management and recommended for being absorbed against the aided vacancy, since he has been working in the unaided post from a long time. The learned counsel for the petitioner could not bring it to the notice of the Court that there is any law, which enables a person to claim appointment or absorption from the date on which the post fell vacant. This is unheard of in the cannons of service law. It all depends upon the recommendations made by the management and the approval given by the competent authority.

In identical circumstances, this Court examined the issue as to the eligibility of Teachers working against unaided vacancies for being appointed against aided vacancies of the same institution in W.P.No.11332 of 2002 and by Judgment dated

7-11-2003 it was observed as under:

> "The absorption of the petitioner from an unaided post to aided post, by no stretch of imagination, can be said to be a new selection justifying the official respondents to place him under apprenticeship in terms of the newly inserted sub-rule (1-a) to Rule 12 of the Rules framed by the Government in G.O.Ms.No.1, Education (P.S.2) Department, dated 1-1-1994 by reason of the orders issued by the Government in G.O.Ms.No.180, Education, dated 29-12-2000 and the subsequent amendment made thereto by reason of the orders issued by the Government in G.O.Ms.No.100, Education, dated 16-8-2001. The absorption of the petitioner from unaided post to aided post having been made in accordance with the Rules framed by the Government in G.O.Ms.No.1, Education (P.S.2) Department, dated 1-1-1994, and his selection also to the unaided post having been made in terms of the said Rules by following the due process of recruitment by the duly constituted Staff Selection Committee, which is a condition precedent for absorption of the petitioner from unaided post to aided post, the selection of the petitioner from an unaided post to aided post, cannot be treated as a new selection, so as to make the orders issued by the Government in G.O.Ms.No.180, Education, dated 29-12-2000 and G.O.Ms.No.100, Education, dated 16-8-2001 applicable to the petitioner justifying the official respondents to place the petitioner under apprenticeship and pay him stipend."

Be that as it may, in this case, the case of the petitioner was considered in view of the interim orders passed in W.P.M.P.No.23751 of 1998, dated 16-7-1998. I am of the opinion that since the petitioner was entitled for being absorbed against an aided vacancy, his case was rightly considered by Proceedings dated 25-11-1998 of the 1st respondent with effect from 25-11-1998, though there is some delay in the matter, and the petitioner cannot claim regularization from an anterior date, even if he is entitled otherwise to hold the post.

Accordingly, the Writ Petition is disposed of. No order as to costs.

16-6-2005

prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 Regional Joint Director of School Education,
Cuddapah
2 The District Educational Officer,
Cuddapah.
3 The Director of School Education,
Andhra Pradesh, Hyderabad.
4 The Secretary, Education Committee,
R.C.M. Schools, Mariyapuram, Cuddapah.

5 2 CCs to Government Pleader for School Education, High Court Buildings, Hyderabad (OUT)

6 2 CD copies